

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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SENATE BILL 182  
PROPOSED COMMITTEE SUBSTITUTE S182-CSSA-45 [v.2]

5/13/2013 3:42:08 PM

Short Title: Limit Appeals to Superior Court.

(Public)

Sponsors:

Referred to:

March 6, 2013

A BILL TO BE ENTITLED  
AN ACT TO ELIMINATE APPEALS FOR INFRACTIONS, TO MODIFY APPEALS TO  
THE SUPERIOR COURT IN PROBATION REVOCATIONS IN WHICH THE  
DEFENDANT HAS WAIVED A HEARING, TO ALLOW FOR AN UNRESTRICTED  
RESENTENCING HEARING UPON THE REVERSAL OF A SENTENCE ON  
APPELLATE REVIEW, TO AMEND THE ADMISSIBILITY OF A SCREENING TEST  
IN PROBABLE CAUSE HEARINGS FOR DRIVING WHILE IMPAIRED, AND TO  
RECLASSIFY CERTAIN MISDEMEANORS AS INFRACTIONS, .

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 15A-1115 reads as rewritten:

**"§ 15A-1115. ~~Review of disposition by superior court.~~Review of Infractions originally disposed of in superior court.**

(a) ~~Appeal of District Court Decision. — A person who denies responsibility and is found responsible for an infraction in the district court, within 10 days of the hearing, may appeal the decision to the criminal division of the superior court for a hearing de novo. Upon appeal, the defendant is entitled to a jury trial unless he consents to have the hearing conducted by the judge. The State must prove beyond a reasonable doubt that the person charged is responsible for the infraction unless the person admits responsibility. Unless otherwise provided by law, the procedures applicable to misdemeanors disposed of in the superior court apply to those infraction hearings. In the superior court, a prosecutor must represent the State. Appeal from the judgment in the superior court is as provided for other criminal actions in superior court, and the Attorney General must represent the State in an appeal of such actions.~~

(b) **Review of Infractions Originally Disposed of in Superior Court. —** If the superior court disposes of an infraction pursuant to its jurisdiction in G.S. 7A-271(d), appeal from that judgment is as provided for criminal actions in the superior court."

**SECTION 2.** G.S. 15A-1347 reads as rewritten:

**"§ 15A-1347. ~~Appeal from revocation of probation or imposition of special probation upon violation.~~violation; consequences of waiver of hearing.**

(a) ~~When~~ Except as provided in subsection (b) of this section, when a district court judge, as a result of a finding of a violation of probation, activates a sentence or imposes special probation, the defendant may appeal to the superior court for a de novo revocation hearing. At the hearing the probationer has all rights and the court has all authority they have in a revocation hearing held before the superior court in the first instance. Appeals from lower courts to the superior courts from judgments revoking probation may be heard in term or out of term, in the county or out of the county by the resident superior court judge of the district or the superior court judge assigned to hold the courts of the district, or a judge of the superior court



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commissioned to hold court in the district, or a special superior court judge residing in the district. When the defendant appeals to the superior court because a district court has found he violated probation and has activated his sentence or imposed special probation, and the superior court, after a de novo revocation hearing, orders that the defendant continue on probation under the same or modified conditions, the superior court is considered the court that originally imposed probation with regard to future revocation proceedings and other purposes of this Article. When a superior court judge, as a result of a finding of a violation of probation, activates a sentence or imposes special probation, either in the first instance or upon a de novo hearing after appeal from a district court, the defendant may appeal under G.S. 7A-27.

(b) If a defendant waives a revocation hearing, the finding of a violation of probation, activation of sentence, or imposition of special probation may not be appealed to the superior court."

**SECTION 3.** G.S. 15A-1335 is repealed.

**SECTION 4.** G.S. 20-16.3 is amended by adding a new subsection (e) to read:

"(e) Use of Screening Test Numeric Results; Probable Cause. – The numeric result on a driver's alcohol screening test may be used in determining whether there is probable cause for believing:

- (1) That the driver has committed an offense involving impaired driving under G.S. 20-138.1 or G.S. 20-138.2; and
- (2) That the driver had consumed alcohol and that the driver had in his or her body previously consumed alcohol. Negative or low results on the alcohol screening test may be used in factually appropriate cases in determining whether a person's alleged impairment is caused by an impairing substance other than alcohol.

If the numeric result on a driver's alcohol screening test is heard by the judge at the probable cause hearing and the offense is subsequently set for trial, the defendant is entitled to trial before a different judge."

**SECTION 5.** G.S. 20-35 reads as rewritten:

**"§ 20-35. Penalties for violating Article; defense to driving without a license.**

(a) ~~Penalty. – A~~ Except as otherwise provided in subsection (a1) of this section, a violation of this Article is a Class 2 misdemeanor unless a statute in the Article sets a different punishment for the violation. If a statute in this Article sets a different punishment for a violation of the Article, the different punishment applies.

(a1) A person who does any of the following is responsible for an infraction:

- (1) Fails to carry a valid license while driving a motor vehicle, in violation of G.S. 20-7(a).
- (2) Operates a motor vehicle with an expired license, in violation of G.S. 20-7(f).
- (3) Fails to notify the Division of an address change for a drivers license within 60 days after the change occurs, in violation of G.S. 20-7.1.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 4.

(c) ~~Defenses. – A person may not be convicted or found responsible for failing to carry a regular drivers license if, when tried for that offense, the person produces in court a regular drivers license issued to the person that was valid when the person was charged with the offense. A person may not be convicted or found responsible for driving a motor vehicle without a regular~~ with an expired drivers license if, when tried for that offense, the person shows all the following:

- (1) That, at the time of the offense, the person had an expired license.
- (2) The person renewed the expired license within 30 days after it expired and now has a drivers license.

- (3) The person could not have been charged with driving without a license if the person had the renewed license when charged with the offense."

**SECTION 6.** G.S. 20-176 reads as rewritten:

"(a) Violation of a provision of Part 9, 10, 10A, or 11 of this Article is an infraction unless the violation is specifically declared by law to be a misdemeanor or felony. ~~Violation~~ Except as otherwise provided in subsection (a1) of this section, violation of the remaining Parts of this Article is a misdemeanor unless the violation is specifically declared by law to be an infraction or a felony.

(a1) A person who does any of the following is responsible for an infraction:

- (1) Fails to carry the registration card in the vehicle, in violation of G.S. 20-57(c).
- (2) Fails to sign the vehicle registration card, in violation of G.S. 20-57(c).
- (3) Fails to notify the Division of an address change for a vehicle registration card within 60 days after the change occurs, in violation of G.S. 20-67.

..."

**SECTION 7.** G.S. 113-135(a) reads as rewritten:

"(a) Any person who violates any provision of this Subchapter or any rule adopted by the Marine Fisheries Commission or the Wildlife Resources Commission, as appropriate, pursuant to the authority of this Subchapter, is guilty of a misdemeanor except that fishing without a license in violation of G.S. 113-174.1(a) or G.S. 113-270.1B(a) is punishable as an infraction and punishment for violation of the rules of the Wildlife Resources Commission is limited as set forth in G.S. 113-135.1. Unless a different level of punishment is elsewhere set out, anyone convicted of a misdemeanor under this section is punishable as follows:

- (1) For a first conviction, as a Class 3 misdemeanor.
- (2) For a second or subsequent conviction within three years, as a Class 2 misdemeanor."

**SECTION 8.** Section 3 of the act becomes effective December 1, 2013, and applies to appeals initiated on or after that date. The remainder of this act becomes effective December 1, 2013, and applies to offenses committed on or after that date.